

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS
AND GUIDELINES ON:

Education Code Sections 44332.6, 44830.1,
45122.1, 45125, and 45125.1; Statutes 1997,
Chapter 588, and Statutes 1997, Chapter 589;

Education Code Section 45 125; as amended by
Statutes 1998, Chapter 840;

Filed on April 4, 2003;

No. 97-TC- 16

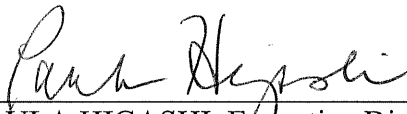
Criminal Background Checks I

ADOPTION OF AMENDMENT TO
PARAMETERS AND GUIDELINES
PURSUANT TO GOVERNMENT CODE
SECTION 17557 AND CALIFORNIA CODE
OF REGULATIONS, TITLE 2, SECTION
1183.2.

(Adopted on December 2, 2003)

AMENDED PARAMETERS AND GUIDELINES

On December 2, 2003, the Commission on State Mandates adopted the attached Amended Parameters and Guidelines.



PAULA HIGASHI, Executive Director

12-5-03
Date

AMENDED PARAMETERS AND GUIDELINES

Education Code Sections 44332.6, 44830.1,
45122.1, 45125, and 45125.1

Statutes 1997, Chapter 588
Statutes 1997, Chapter 589

Education Code Section 45 125, as Amended by Statutes 1998, Chapter 840

Criminal Background Checks I (97-TC-16)
(a.k.a. *Michele Montoya School Safety Act*)

I. SUMMARY OF THE MANDATE

On March 25, 1999 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a reimbursable state-mandated program on school districts under article XIII B, section 6 of the California Constitution and Government Code section 175 14.

The test claim legislation enacts the Michelle Montoya School Safety Act, which requires school districts to obtain criminal background checks on specified certificated and non-certificated employees prior to hiring and to obtain certification that specified employees of entities that contract with school districts for janitorial, administrative, landscape, transportation, and food-related services have been fingerprinted. The test claim legislation also requires school districts to suspend and terminate specified certificated employees and temporary, substitute and probationary employees hired before September 30, 1997 (the effective date of the test claim legislation) if the school district receives notification from the Department of Justice that the employee has been convicted of a violent or serious felony.

In 1998 and 1999, the Legislature amended the criminal background checks and related provisions of the Michelle Montoya School Safety Act. The Commission adopted the Statement of Decision for the *Criminal Background Checks II* test claim in February 2003. In the *Criminal Background Checks II* Statement of Decision, the Commission found that because school districts have fee authority within the meaning of Government Code section 17556, subdivision (d), processing applications for non-certificated applicants is not a reimbursable state-mandate. This amendment reflects the Commission's decision in adopting the *Criminal Background Checks II* Statement of Decision.

II. ELIGIBLE CLAIMANTS

Any "school district", as defined in Government Code section 175 19, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.¹

¹ The activities under this mandate also apply to charter schools.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, prior to its amendment by Statutes 1998, chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on December 30, 1997, establishing eligibility for Fiscal Year 1996-1997. However, the test claim legislation was enacted as urgency measures and became effective on September 30, 1997. Therefore, costs incurred on or after September 30, 1997, for compliance with the mandate are reimbursable.

Government Code section 17557, subdivision (c), states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Statutes 1998, chapter 840, which amended Education Code Section 45 125, became effective September 25, 1998. However, *Criminal Background Checks II* test claim was filed on December 15, 2000. Therefore, this amendment is effective July 1, 1999.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable.

Pursuant to Government Code section 17561, subdivision (d)(I), all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 20 15.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

A. Criminal Background Checks for Certificated Employees Hired After September 30, 1997.

Obtaining fingerprints and the required processing fee from applicants selected for all certificated employee positions; processing the required fingerprints and any required forms, sending the fingerprints and required forms to the Department of Justice, resolving problems with the DOJ; and reviewing the criminal background checks and other correspondence from DOJ to determine whether the applicant has been convicted of a serious or violent felony.

For all certificated employees at all school districts hired after September 30, 1997, the costs of overtime for existing employees who are required to perform the duties of the certificated applicant during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ are reimbursable under this component. The difference in costs between the salary and benefits of the substitutes and temporary employees who are hired to perform the duties of the certificated applicant during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ are also reimbursable under this component.

B. Criminal Background Checks for Certificated Employees Applying for a Temporary Certificate or Temporary Certificate of Clearance.

Obtaining fingerprints and the required fee for processing the fingerprints and obtaining a criminal record summary from applicants for certificated positions prior to employing such applicants based upon a temporary certificate (county offices of education) or a temporary certificate of clearance (school districts); processing fingerprints, any required forms, and fees, sending the fingerprints, any required forms, and fees to the DOJ for processing, and resolving problems with the DOJ; reviewing the criminal background checks and other correspondence from DOJ to determine whether the applicant was arrested or convicted of a violent or serious felony; and notifying an applicant whether the county office of education or school district will issue a temporary certificate or temporary certificate of clearance.

For all certificated employees applying for a temporary certificate or temporary certificate of clearance at all school districts hired after September 30, 1997, the costs of overtime, for existing employees who are required to perform the duties of the applicant being hired during the time from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check from the DOJ on the applicant are reimbursable under this component. The difference in costs between the salary and benefits offered to the certificated applicant and the salary and benefits of the substitutes, and temporary employees who are hired to perform the duties of the applicant being hired during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ, are also reimbursable under this component.

C. Criminal Background Checks for Contractor Employees.

Drafting and revising contracts, bid documents, requests for proposal, and other contract documents to include provisions relating to the duties of entities contracting with school districts to provide janitorial, administrative, landscape, transportation, or food-related services to comply with Education Code section 45 125.1; determining whether the employees of entities contracting with school districts to provide janitorial, administrative, landscape, transportation, or food-

related service will have limited contact with pupils; taking appropriate steps to protect the safety of the pupils that may come into contact with those contractor employees who will have limited contact with pupils; assuring that the contracting entity provides a certification to the school district that none of its employees have been convicted of a felony and a list of employees who may come into contact with pupils; distributing the lists of contractor employees to the appropriate school or schools.

D. Electronic Fingerprinting Equipment.

Costs of electronic fingerprinting system equipment and other equipment used to obtain criminal background checks, including service and system connection costs, are reimbursable to the extent that the purchase is cost-effective for the school district. Factors in determining if purchasing electronic fingerprinting system equipment is cost-effective include, but are not limited to, staffing needs and the availability of electronic fingerprinting system equipment in other jurisdictions within the community of the school district.

E. Preparation of Policies, Procedures, Guidelines and Training.

Preparation and adoption of policies, procedures, and guidelines for obtaining and processing criminal background checks and other requirements in the test claim legislation. This reimbursable component includes, but is not limited to, reimbursement of the labor time of school district personnel involved with review of the test claim legislation; preparation of policies, procedures, and guidelines; preparation for and attendance at training sessions, and conducting training sessions. The cost of materials and supplies used for policies, procedures, and guidelines and used or distributed in training sessions, fees and costs paid to consultants who conduct training sessions, and travel and training expenses for the school district personnel who conduct or attend the training sessions are reimbursable under this component

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement pursuant to this mandate must be timely filed and identify each of the following cost elements to each reimbursable activity identified in Section IV of this document.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A. 1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A. 1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAYINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program because of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 1756 1, subdivision (d)(l), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 1757 1. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

December 5, 2003, I served the:

Adopted Parameters and Guidelines Amendment

Criminal Background Checks I, 97-TC- 16

Napa County Office of Education, Claimant

Education Code sections 44332.6, 44830.1, 45122.1, 45125, and 45125.1

Statutes 1997 Chapters 588 and 589

by placing a true copy thereof in an envelope addressed to:

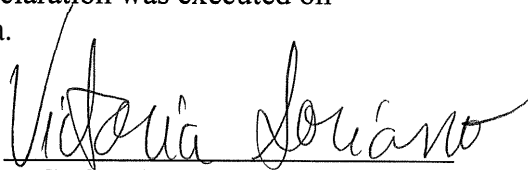
Mr. David Scribner
Schools Mandate Group
One Capitol Mall, Suite 200
Sacramento, CA 95814

Mr. Mike Havey
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 5, 2003, at Sacramento, California.


VICTORIA SORIANO